

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VALASSIS COMMUNICATIONS, INC.,

Plaintiff,

v.

NEWS CORPORATION; NEWS
AMERICA MARKETING, a/k/a
NEWS AMERICA, INC., a/k/a
NEWS AMERICA MARKETING
GROUP; NEWS AMERICA
MARKETING FSI, LLC, a/k/a
NEWS AMERICA MARKETING
FSI, INC.; and NEWS AMERICA
MARKETING IN-STORE
SERVICES, LLC a/k/a NEWS
AMERICA MARKETING
IN-STORE SERVICES, INC.,

Defendants.

Case No. 1:17-cv-07378

HON. P. KEVIN CASTEL

**PLAINTIFF'S APPLICATION
TO FILE DOCUMENTS UNDER
SEAL**

Pursuant to Section 5 of the Court's Individual Practices, Plaintiff Valassis Communications, Inc. submits this application to seal, along with the supporting Declaration of Evan Stein dated May 18, 2018, for the limited purpose of complying with the governing protective order as applied to third parties who produced documents in this Action. Each of these third parties was a named plaintiff in *Dial v. News*, 13-cv-6802-WHP (S.D.N.Y.), and the materials at issue constitute discovery in the *Dial* action that was reproduced in the pending Action. Valassis seeks to file certain documents produced by these parties and excerpts of transcripts of depositions of their representatives and/or employees as exhibits to Valassis's upcoming opposition to Defendants' motion for summary judgment. Valassis requests that this Court grant leave to file the exhibits under seal for the limited purpose of allowing the third

parties to move or otherwise notify the Court regarding their position as to whether the materials merit sealed treatment.

Pursuant to this Court's Individual Practices, fourteen days before Valassis's opposition papers were due, Valassis contacted the counsel for the third parties who represented these third parties in the *Dial* action and with whom Valassis had communicated previously to obtain consent for the reproduction of certain discovery from the *Dial* action in this Action. Stein Decl. ¶ 5. Valassis notified that counsel that Valassis intended to attach certain documents and deposition excerpts to Valassis's upcoming submission. *Id.* On Monday, May 14, that counsel informed Valassis that they no longer represent the *Dial* plaintiffs, and further proposed that Valassis contact the individual plaintiffs directly. *Id.* Valassis immediately sent notice to the individual *Dial* plaintiffs via overnight express delivery using the addresses provided by their former counsel. *Id.* Counsel did not provide other contact information for the individual *Dial* plaintiffs. *Id.* Valassis is awaiting responses from some of those parties. *Id.*

Pending their response, and in the interest of complying with this Court's Individual Practices, Valassis seeks to temporarily file these documents under seal on behalf of the *Dial* plaintiffs so that they may have the full seven days to determine whether they will seek sealed treatment of the relevant materials. Valassis informed each of the relevant third-parties of Valassis's position that these materials do not merit sealed treatment under *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119 (2d Cir. 2006).

The documents proposed to be filed temporarily under seal are attached as Exhibits 1-11 to the Declaration of Evan Stein. Valassis intends to rely on these documents to demonstrate that Defendants' motion for summary judgment should be denied. Given the time constraints, and to

preserve the interests of the third parties, Valassis respectfully respects leave to file the documents temporarily under seal pending further guidance from the Court.

* * * *

For the foregoing reasons, Valassis respectfully requests that the Court permit Valassis to file under seal the Exhibits to the Stein Declaration, and enter the proposed order submitted herewith.

Respectfully submitted,

Dated: May 18, 2018

By: /s/ Vincent Levy

Vincent Levy
Scott M. Danner
Evan H. Stein
HOLWELL SHUSTER & GOLDBERG LLP
750 Seventh Avenue, 26th Floor
New York, NY 10019
(646) 837-5151
vlevy@hsgllp.com

Attorneys for Plaintiff